

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ROY MITCHELL,

Plaintiff,

v.

KEVIN KALLAS, et al.

Defendants,

ORDER

15-cv-108-wmc
Appeal no. 16-3350

On August 26, 2016, the court granted summary judgment in favor of defendants Kevin Kallas and Dr. Dawn Laurent, and dismissed the prisoner civil rights complaint filed by plaintiff Roy Mitchell. Now, Mitchell has filed a notice of appeal. Mitchell has been found eligible to proceed as an indigent previously in this case, and presumably seeks to proceed *in forma pauperis* on appeal. (Dkt. # 163).

As an initial matter, the federal *in forma pauperis* statutes require a district court to certify whether an appeal is “not taken in good faith” or that the party is “not otherwise entitled to proceed” as an indigent litigant. FED. R. APP. P. 24(a)(3). The court has carefully reviewed all pertinent matters in this civil action. Based on this review, it does not appear that Mitchell has filed her appeal in bad faith for purposes of Fed. R. App. P. 24(a)(3).

The court notes further that Mitchell has not received three “strikes” or sanctions against her for engaging in frivolous litigation while in prison, *see* 28 U.S.C. § 1915(g), and there does not appear to be any other impediment to indigent status. Therefore, after considering her recent inmate trust fund account statement, the court concludes

that Mitchell is eligible to proceed as an indigent litigant.

Although Mitchell has been found eligible to proceed *in forma pauperis*, the PLRA requires indigent inmates to pay the full amount of the docketing fee for his notice of appeal (\$505) in increments, starting with an initial partial payment, pursuant to the formula found in 28 U.S.C. § 1915(b)(1)-(2). Based on Mitchell's inmate trust fund account statement, the court calculates an initial partial appeal filing fee of \$3.53, which will be applied from a check she sent to the court on September 2, 2016. Hereafter, Mitchell shall pay the remainder of the \$505 appellate docketing fee in monthly installments according to 28 U.S.C. § 1915(b)(2).

ORDER

IT IS ORDERED that:

1. Having found that the notice of appeal is not taken in bad faith for purposes of Fed. R. App. P. 24(a)(3) and that she is otherwise eligible to proceed as an indigent litigant, plaintiff Roy Mitchell's motion for leave to proceed *in forma pauperis* on appeal (Dkt. # 163) is GRANTED.
2. Mitchell is assessed \$3.53 as an initial partial payment of the appellate docketing fee for her appeal, which will be applied from the \$7.10 check received by the court on September 2, 2016. Hereafter, Mitchell shall pay the remainder of the \$505 appellate docketing fee in monthly installments according to 28 U.S.C. § 1915(b)(2).

Entered this 13th day of September 2016.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge